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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/760,337	01/20/2004	Rodney L. Pettis	025635.011.042	9813

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EXAMINER

HON, SOW FUN

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 03/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/760,337	<b>Applicant(s)</b> PETTIS, RODNEY L.	
	<b>Examiner</b> Sow-Fun Hon	<b>Art Unit</b> 1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) 28-35 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>1/20/04</u> . | 6) <input type="checkbox"/> Other: ____.  |

## DETAILED ACTION

### *Election/Restrictions*

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-27, drawn to a product, classified in class 428, subclass 34.9.

II. Claims 28-35, drawn to a process, classified in class 264, subclass 480.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions II and I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case, the film can be formed by the method step of coextruding the three layers simultaneously, wherein the layers have been prepositioned before extrusion, instead of positioning a first extruded layer of elastomer, a second extruded layer of polyolefin and a third extruded layer of elastomer respective to each other, and then forming the film.

3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

4. During a telephone conversation with Mark Chretien on November 30, 2004, a provisional election was made without traverse to prosecute the invention of I, claims 1-27. Affirmation of this election must be made by applicant in replying to this Office action. Claims 28-35 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-26 are rejected under 35 U.S.C. 103(a) as being obvious over Schirmer et al. (US 5,219,666).

Regarding claims 1-4, 15-19, Schirmer teaches a combination product and shrink-wrap packaging film (column 8, lines 10-20), the combination comprising a product (soft drink can); and a shrink-wrap packaging film contacting and substantially surrounding the product and shrunk thereon (column 8, lines 10-20). The shrink-wrap packaging film comprises a first outermost layer of elastomer (second layer comprising styrene butadiene copolymer), a second inner layer of polyolefin (very low density polyethylene) (column 3, lines 35-40) overlying and abuttingly contacting the first outermost layer of elastomer (adhered directly to the first layer) (column 12, lines 34-45). Schirmer provides an embodiment where third outermost layer of elastomer is placed so that the second inner layer of polyolefin is positioned between the first and third outermost layers of elastomer, whereby the third outermost layer of elastomer is indirectly adhered to the second inner layer of polyolefin via a polymeric adhesive (column 3, lines 10-20). Therefore, although Schirmer fails to teach a third outermost layer of elastomer placed so that it overlies and abuttingly contacts the second inner layer of the polyolefin, because Schirmer provides an embodiment where third outermost layer of elastomer is placed so that the second

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inner layer of polyolefin is positioned between the first and third outermost layers of elastomer, it would have been obvious to one of ordinary skill in the art at the time the invention was made, to have directly adhered the third outermost layer of elastomer to the second inner layer of polyolefin so as to overly and abuttingly contact the second inner layer of polyolefin.

Schirmer teaches that the packaging film has excellent clarity (column 2, lines 45-50), higher modulus and toughness (column 1, lines 47-58), and therefore has enhanced optical and mechanical properties for a selected overall packaging gauge thickness to allow the product to be seen more clearly through the packaging film and to increase modulus for the packaging film. Due to the higher modulus and toughness, the packaging film is not punctured easily when an outside force is applied thereto, and also allows the packaging film to be readily usable with packaging machinery at relatively high speeds (column 1, lines 45-50).

Regarding claims 5, 20, Schirmer teaches that the overall shrink-wrap packaging film gauge thickness is 1 mil (column 8, lines 1-5), which is within the claimed range of about 0.5 to about 3 mil, and so is more economical to manufacture without a reduction in clarity or strength of the shrink-wrap packaging film.

Regarding claims 6, 21, Schirmer teaches that the first and third outermost layers of elastomer each is about 13 %, which is within the claimed range of about 10 % to about 25 %, of the final film gauge thickness (column 8, lines 5-10), which means that without the intermediate adhesive layers, the second inner layer of polyolefin would form about  $(100 - (2 \times 13) =) 74$  % of the final gauge thickness, which is within the claimed range of about 50 to about 80 %.

Regarding claims 7, 22, although Schirmer fails to teach that the enhanced optical properties comprises a haze in the range of about 1 % to about 10 % so that the packaging film is

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clear and the product can be easily seen through the packaging film once the packaging film is heated to securely restrain the product with the packaging film, because Schirmer teaches that the film is ultra clear (column 8, lines 1-5), and because zero haze is very difficult to achieve, the claimed haze in the range of about 1 % to about 10 % is inherent in the ultra clear film so that the packaging film is clear and the product can be easily seen through the packaging film once the packaging film is heated to securely restrain the product with the packaging film.

Regarding claim 8, although Schirmer fails to teach indicia on the product, because Schirmer teaches that the film is also used for overwrapping non-food products (column 6, lines 50-55) and that the film is ultra clear (column 8, lines 1-5), it would have been obvious to one of ordinary skill in the art at the time the invention was made, to have used the film to overwrap printed products with indicia (print), so that the indicia can be seen more clearly through the shrink-wrap packaging film without the necessity of removing the packaging film.

Regarding claims 9, 22, 27, although Schirmer fails to teach a 45° gloss in a range of about 70% to about 110%, because Schirmer teaches that the film is ultra-clear and glossy (column 8, lines 1-5) hence teaching the desirability of clarity and gloss, the claimed 45° gloss in a range of about 70% to about 110% is either inherent in the film, or the result of optimizing the processing conditions of the packaging film by one of ordinary skill in the art, so that the product can be easily seen through the packaging film once the packaging film is heated to securely restrain the product with the packaging film..

Regarding claim 10, Schirmer teaches that the packaging film is also a label film (column 1, lines 35-40) so that printability is desirable (column 1, lines 47-51), meaning that there are

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indicia (print) on the packaging film, so that the combination product and shrink-wrap packaging are more aesthetically pleasing to consumers.

Regarding claims 11, 23, although Schirmer fails to disclose a tensile modulus in a range of about 50, 000 psi to about 120, 000 psi, because Schirmer teaches that the packaging film has higher modulus and toughness to permit its use with a label manufacturing apparatus (column 1, lines 47-58), hence teaching the desirability of a high tensile modulus, the claimed tensile modulus in a range of about 50, 000 psi to about 120, 000 psi, is either inherent in the film, or the result of optimizing the processing conditions of the packaging film by one of ordinary skill in the art, so that the shrink-wrap packaging film is readily usable with packaging machinery at relatively high speeds.

Regarding claims 12, 24, although Schirmer fails to disclose a tensile strength in a range of about 2,000 psi to about 3500 psi, because Schirmer teaches that the packaging film has higher modulus and toughness (column 1, lines 47-58), hence teaching the desirability of a high tensile strength, the claimed tensile strength in a range of about 2,000 psi to about 3500 psi, is either inherent in the film, or the result of optimizing the processing conditions of the packaging film by one of ordinary skill in the art, so that the shrink-wrap packaging film can withstand forces applied thereto being placed upon the shrink-wrap packaging film.

Regarding claims 13, 25, although Schirmer fails to disclose a shrink in a transverse direction of about 0 % to about 60 % and in a machine direction of about 60 % to about 90 %, because Schirmer teaches that orientation is imparted in primarily the transverse direction, or both the transverse direction and the machine (longitudinal) direction (column 5, lines 35-45), which then dictates how much shrinkage occurs in the transverse direction and the machine

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direction, and that the film shrank tightly around the product (column 8, lines 10-20), it would have been obvious to one of ordinary skill in the art at the time the invention was made, to have provided the claimed shrink in a transverse direction of about 0 % to about 60 % and in a machine direction of about 60 % to about 90 %, by varying the degree of orientation and shrink conditions, in order to obtain a shrink-wrap packaging film which shrinks sufficiently to securely restrain the product within the shrink-wrap packaging film.

Regarding claims 14, 26, although Schirmer fails to disclose a dart impact strength in a range of about 300 grams to about 1000 grams, because Schirmer teaches that the packaging film has higher modulus and toughness (column 1, lines 47-58), hence teaching the desirability of a high toughness and hence high impact strength, the claimed dart impact strength in a range of about 300 grams to about 1000 grams, is either inherent in the film, or the result of optimizing the processing conditions of the packaging film by one of ordinary skill in the art, so that the shrink-wrap packaging film is not punctured easily when an outside force is applied thereto.

Any inquiry concerning this communication should be directed to Sow-Fun Hon whose telephone number (571)272-1492. The examiner can normally be reached Monday to Friday from 10:00 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached on (571)272-1498. The fax phone number for the organization where this application or proceeding is assigned is (703)872-9306.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*S. Hon*  
Sow-Fun Hon

*03/21/05*

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*1772*

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